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HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate

Yokohama, Japan
24 January 1949

UNITED STATES OF AMERICA VS MINORU NOMI
UNITED STATES OF AMERICA VS YUTAKA YOKOYAMA
UNITED STATES OF AMERICA VS AKIRA SUZUKI
UNITED STATES OF AMERICA VS HISAYOSHI SHIINOKI

Review of the Staff Judge Advocate

1. The attached record of trial of Minoru Nomi, Yutaka Yokoyama, Akira Suzuki and Hisayoshi Shiinoki at Yokohama, Japan, from 6 October 1948 to 18 October 1948 by a Military Commission appointed by paragraph 1, Special Orders No. 223, Headquarters Eighth Army, United States Army, dated 2 October 1948, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Minoru Nomi	DATE OF CONFINEMENT: 3 July 1948
AGE: 56	DATE OF ARRAIGNMENT: 6 October 1948
RESIDENCE: Hiroshima-shi, Daini, Moto-machi, Jyutaku, No. 337	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married	PERIOD OF TRIAL: 6 October 1948 to 18 October 1948
RELATIVES: Wife, 5 children, 1 brother, 2 sisters	DATE OF SENTENCE: 18 October 1948
EDUCATION: Hamada High School, Naval Academy	SENTENCE: CHL for life
VOCATION: None	CLEMENCY RECOMMENDED BY COMMISSION: No
MILITARY CAREER: 25 years in Imperial Japanese Navy; highest rank attained - Captain	

NAME: Yutaka Yokoyama	DATE OF CONFINEMENT: 22 July 1948
AGE: 27	DATE OF ARRAIGNMENT: 6 October 1948
RESIDENCE: 1386 No. 2 Azahori, Fukuchiyama-shi, Kyoto-fu	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married	PERIOD OF TRIAL: 6 October 1948 to 18 October 1948
RELATIVES: Wife, son, father, mother, brother, sister	DATE OF SENTENCE: 18 October 1948
EDUCATION: Fukuchiyama Higher Commercial School	SENTENCE: CHL for eight (8) years
VOCATION: None	CLEMENCY RECOMMENDED BY COMMISSION: No
MILITARY CAREER: 1 October 1943 to 15 August 1945; highest rank attained - Lieutenant Jr. Grade	

NAME: Akira Suzuki	DATE OF CONFINEMENT: 7 July 1948
AGE: 28	DATE OF ARRAIGNMENT: 6 October 1948
RESIDENCE: Ibaraki-ken, Koga-machi, Daiku-machi 5703	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married	PERIOD OF TRIAL: 6 October 1948 to 18 October 1948
RELATIVES: Wife, son, sister	DATE OF SENTENCE: 18 October 1948
EDUCATION: Waseda University	SENTENCE: CHL for eight (8) years
VOCATION: None	CLEMENCY RECOMMENDED BY COMMISSION: No
MILITARY CAREER: 1 October 1943 to 15 August 1945; highest rank attained - Lieutenant Jr. Grade	

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NAME: Hisayoshi Shiinoki
AGE: 33
RESIDENCE: Kyoto-shi, Nakakyo-ku, Mibu Mori Machine 51
MARITAL STATUS: Married
RELATIVES: Wife, son, mother, brother
EDUCATION: Grammar School
VOCATION: Textile Designer
MILITARY CAREER: 1 March 1939 to 15 August 1945 in Imperial Japanese Navy

DATE OF CONFINEMENT: 26 August 1948
DATE OF ARRAIGNMENT: 6 October 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 6 October 1948 to 18 October 1948
DATE OF SENTENCE: 18 October 1948
SENTENCE: CHL for eight (8) years
CLEMENCY RECOMMENDED BY COMMISSION: No

2. Synopsis of Charges, Pleas, Findings and Legal Sufficiency:

<u>Charges and Specifications:</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
<u>NOMI</u>			
Charge: Accused, during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War.	NG	G	Yes
Sp. That between about 1 May 1945 and about 31 May 1945, accused did cause the deaths of 1st Lt Robert F. Burgie, 2nd Lt John D. Holbrook, S/Sgt David H. Morgan and two other unidentified American PWs by ordering and permitting his subordinates to kill the said PWs by shooting, bayoneting and decapitating.	NG	G except the words "shooting, bayoneting and". Substituting also for the words, "1 May 1945" the words, "1 March 1945". Of the excepted words, Not Guilty; of the substituted words, Guilty.	Yes
<u>YOKOYAMA</u>			
Charge: Accused, during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War.	NG	G	Yes
Sp: That in or about May 1945, accused did willfully and unlawfully kill an unidentified American PW by decapitating him.	NG	G except the words, "willfully and"; substituting also for the words, "May, 1945", the words, "1 March 1945 to 31 May 1945"; adding also before the word, "did", the words, "acting under orders." Of the excepted words, Not Guilty; of the substituted or added words, Guilty.	Yes

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SUZUKI

Charge: Accused, during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War. NG G Yes

Sp: That in or about May 1945, accused did willfully and unlawfully kill an unidentified American PW by decapitating him. NG G Yes
except the words, "willfully and"; substituting also for the words, "May, 1945", the words, "1 March 1945 to 31 May 1945"; adding also before the word, "did", the words, "acting under orders". Of the excepted words, Not Guilty; of the substituted or added words, Guilty.

SHIINOKI

Charge: Accused, during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War. NG G Yes

Sp: That in or about May 1945, accused did willfully and unlawfully kill an unidentified American PW by decapitating him. NG G Yes
except the words, "willfully and"; substituting also for the words, "May, 1945", the words, "1 March 1945 to 31 May 1945"; adding also before the word, "did", the words, "acting under orders". Of the excepted words, Not Guilty; of the substituted or added words, Guilty.

3. Summary of the Evidence:

a. For the Prosecution:

As to Specification 1: (Minoru Nomi) Between 1 March 1945 and 31 May 1945 at Kodokan, Hainan Island, accused, Minoru Nomi, then the commanding officer of the 16th Naval Guard Unit, and having in his custody as prisoners of war, First Lieutenant Robert F. Burgie, Second Lieutenant John D. Kolbrook, Staff Sergeant David F. Morgan and two other unidentified American prisoners of war, did cause the deaths of the said prisoners of war by ordering and permitting his subordinates to kill the said prisoners of war by decapitating.

The victims in this case are American flyers who were captured by the Japanese after several U. S. Army aircraft crashed off

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Hainan Island (South China) in March 1945. At that time, the Japanese Imperial Navy was in control of the island and the unit charged with responsibility for command was the Hainan Defense Headquarters, located on Hainan Island and under the command of Vice Admiral Keijiro Goga. The following officers were under Admiral Goga's immediate command and were on his staff: Rear Admiral Kinji Senda, Chief of Staff, Captain Toyosaburo Sato, Senior Staff Officer, Lt. Commander Minoru Tada, Intelligence Officer. One of the subordinate units on the island under the Hainan Defense Headquarters was the 16th Naval Guard Unit, which was commanded by the accused.

Following the capture of the flyers, they were interrogated by Lt. Commander Tada at the Hainan Defense Headquarters (Ex 13, 14) and were then returned to the 16th Naval Guard Unit for imprisonment under orders of Admiral Goga (Ex 8, 11). Previously when Goga assumed command on Hainan Island, he issued instructions, both verbally and written, that any enemy personnel, prisoners of war and civilians, who were captured were to be treated properly (Ex 11).

The detention of prisoners of war was considered a problem by the accused because at that time (March 1945) the guard unit was preparing for the defense of the island (R 25). Accused told one of his subordinate officers, Lt. Masanobu Agari, that he was going over to Hainan Defense Headquarters to see whether or not he could have them take care of the prisoners since it was too much of a bother and he would have the problem of housing and feeding them (Ex 7). About thirty minutes later accused returned and told Agari and Lt. Yuasa that it was all right for the prisoners to be disposed of. It was in the form of an order. The meaning was very clear to Agari. It was that the prisoners were to be executed (Ex 7, R 25). Nomi did not state what had transpired at Hainan Defense Headquarters or to whom he had spoken (Ex 7). Nomi did not tell Agari that the flyers were being executed on the orders of the Hainan defense forces or that the headquarters had agreed to have the flyers executed (R 26, 27). After the war, accused told Agari, the executions would bring trouble (Ex 7, R 34).

Accused stated that Lt. Agari came to him some time in May or June of 1945 and inquired as to what to do with the American flyers. He understood that Agari wanted to execute the flyers and he informed him to make this request to Hainan Defense Headquarters (Ex 18). He believed that Agari phoned Lt. Commander Tada and asked for staff approval of the execution. Accused was under the impression that Agari received approval from Tada (Ex 18). Agari further informed accused that he had issued orders to Lt. Yuasa and Lt. Suzuki to perform the execution. After it was over, accused did not reprimand Agari (Ex 18).

In April or May 1945, Admiral Goga was informed by one of his staff that the American flyers had been executed contrary to his orders (Ex 11, R 61). He gave an order to Admiral Senda to investigate the matter (R 62). He did not personally investigate but received a report of the matter from Senda (Ex 11). Senda reported that accused alleged that Tada had ordered him (Nomi) to execute the flyers. On the other hand, Tada had stated that he, being only a staff officer, could not issue such an order and both of these men had maintained their position (Ex 11, R 66). After receiving Senda's report, Goga called the accused before him and issued a reprimand (R 68). He took no action in respect to Tada. He did not order a court martial investigation as to Tada or accused because he wanted to maintain harmony between the Headquarters and the 16th Guard Unit (R 68, 69). He warned his staff and the other units that such incidents should not occur again (R 67).

Admiral Tada interrogated the prisoners of war after their capture (Ex 14). The flyers were then returned to the 16th Naval Guard Unit which captured them (Ex 14). He does not know who ordered the

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execution (Ex 14). He never talked to accused about the death of American prisoners (Ex 14).

Admiral Senda stated that he was ordered to conduct an investigation of the execution by Admiral Goga (R 43). He related the difference in the stories of accused and Tada (R 43). Since Tada was only a staff officer, he did not have the authority to order executions without permission from Goga (R 47).

As to Specification 1: (Yutaka Yokoyama, Akira Suzuki, Hisayoshi Shiinoki) Each of these accused is charged with one specification of willfully and unlawfully killing an unidentified American prisoner of war by decapitating him on or about May 1945 at Kodokan, Hainan Island. Yokoyama and Suzuki were lieutenants, junior grade, in the Japanese Navy. Shiinoki was a civilian policeman. All of them were attached to companies on Hainan Island under the command of Lieutenant Yuasa. In the latter part of May, they were ordered to take part in the execution of American prisoners of war. Lieutenant Yuasa was the senior officer in charge and each accused admittedly decapitated a prisoner upon his orders (Ex 1, 2, 3, 9, 10, 15, 16, 17). None of the accused offered any protest or made any statements to the effect that they didn't desire to take part in the execution (Ex 15, 16, 17). After the Japanese surrender, both Nomi and Yuasa told the accused Suzuki to conceal all the facts about the execution (Ex 16).

b. For the Defense:

As to the accused, Minoru Nomi: The accused, after being warned of his rights, took the witness stand and stated there was an air raid on Hainan Island, 6 March 1945; two American planes crashed in the sea and a number of flyers were captured (R 167, 168). Several days later, he telephoned Admiral Tada and asked whether he could send the prisoners to some other unit as the 16th Naval Guard Unit was busy with building fortifications (R 167). On or about 10 March 1945, he talked to Tada at Hainan Defense Headquarters and there Tada gave the accused the order to execute the prisoners (R 163). He received these orders without any suspicions or doubts and on the way back to his unit told his subordinate officers, Agari and Yuasa about them (R 168). He told Yuasa to report to Headquarters regarding the details of the execution and does not know when or how many prisoners were executed (R 168). He did not have the authority to refuse to obey Tada's orders which he construed to come from Admiral Goga (R 170, 171). A subordinate officer could be tried before a court-martial for disobeying a superior's order and would be punished according to the naval penal code, depending upon the situation (R 171). Under some circumstances, an officer could question an order (R 176). Tada did not say why the flyers were to be executed and accused did not ask him (R 175). He did not know whether the flyers had been courts martialled (R 175). At one time, accused denied an execution had taken place; the reason for this denial was concealment and self-protection (R 169). Accused alleged that at an interview in the Wei Ji Building, Tada stated he ordered the execution of the flyers in the presence of the accused, Lieutenant Webber and Mr. Fukuzawa (R 169, 174).

Lieutenant Edward E. Webber testified that while assigned to SCAP Legal Section Investigation Division, he worked on the case and interrogated Nomi, Tada and Goga through the interpreter James Fukuzawa. All of these personnel were present during the interview (R 125, Ex C). Nomi contended that he had received orders for the execution of the flyers from Tada (R 125). Tada denied having anything to do with the execution (R 130, Ex C). Tada showed extreme distress and nervousness during the interrogation and Lieutenant Webber was of the opinion that he was partially responsible for the execution (R 127).

James M. Fukuzawa, an interpreter in the SCAP Legal Section, testified as to the conflicting statements made by the accused and Tada at the interrogation by Lieutenant Webber (R 119). Tada

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maintained he did not give his approval for the execution but, after thirty or forty minutes of interrogation, Tada finally admitted that one of Nomi's subordinates did come for approval (R 119). Witness thought that Tada was concealing his guilt (R 120). Fukuzawa never made the statement that Tada had confessed that he had ordered Nomi to execute the flyers (R 121).

Sergeant Joe S. Wakamatsu testified that, over the telephone, George Nakama told him that Fukuzawa had stated that Tada had confessed he ordered Nomi to execute the flyers. This was on 24 September 1948 (R 99). Nakama denied making the statement (R 109).

The other three accused, Hisayoshi Shiinoki, Yutaka Yokoyama, and Akira Suzuki, after being advised as to their rights, took the witness stand and testified in their own behalf. They were ordered to the execution scene by Lieutenant Yuasa, who also gave the order for decapitation. These accused had not seen the prisoners before and left immediately after the execution (R 157, 161, 164). They knew the Japanese naval regulations and the penalty for willfully disobeying the order of a superior officer. If they had refused to comply with the orders of Lieutenant Yuasa, the accused believed they would have been executed on the spot (R 157, 162, 164).

At the request of the defense, the commission took judicial notice of the Yoshida Case, Docket No. 342, the Uchiyama Case, Docket No. 123 and the Tamara Case, Docket No. 296; also an Atis translation, dated 18 April 1947, of Military Criminal Law and Military Disciplinary Law of the Japanese Army.

Admitted as Exhibit "K" for the defense was the Australian review of a War Crimes case which outlined the defense of superior orders.

4. Opinion:

The entire defense in this case is based upon the plea of "superior orders" and as such is subject to the regulations promulgated by paragraph 4-d (8) of SCAP letter of 5 December 1945. Under SCAP rules, action pursuant to order of the accused's superior, or of his government, shall not constitute a defense but may be considered in mitigation of punishment if the commission determines that justice so requires. This, in effect, modifies the provisions of the United States Rules of Land Warfare, FM 27-10, par 347, mentioned by the defense.

In the case of Nomi, conflicting evidence was presented as to whether he issued the order for the atrocity or relayed it from higher headquarters to his subordinate officers. It was the function of the commission to weigh this evidence and the record is legally sufficient to support its findings of guilty as to this accused. Apparently the commission thought the order came from a superior authority, as evidenced by the sentence imposed, i.e. confinement at hard labor for life instead of death by hanging, as would have been justified if the order had originated with the accused.

The other three accused, Yokoyama, Suzuki and Shiinoki, admitted an act of killing which, by its very nature, "outraged the general sentiment of humanity". Two of these men were officers in the Japanese Navy; the other, Shiinoki, a civilian policeman attached to the Navy. As such, they were chargeable with a higher degree of responsibility and knowledge of the rules of land warfare than the ordinary naval enlisted man. Yet none of the accused protested against the order, made any inquiries as to the legality thereof, or asked to be relieved from participating in the execution. It is considered that their sentences are legal and not excessive.

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The commission was constituted by proper authority and had jurisdiction over the accused and of the offenses charged. There is no evidence that the accused were not sane at the time of the commission of the alleged acts or at the time of the trial. The accused were ably represented by American and Japanese counsel and fully cooperated in their own defense, produced witnesses in their own behalf and took the witness stand in their own defense.

A defense motion for disapproval of findings and modification of sentence has been submitted to the reviewing authority. Careful consideration of this petition in the light of CAP regulations and the many previous decisions involving the defense of "superior orders" fails to indicate the Commission erred in holding these accused responsible for their acts.

No ruling of the Commission is deemed to have affected adversely the substantial rights of the accused.

5. Recommendations:

There are no letters of clemency from any members of the commission or from others. Each accused was found guilty of one specification involving the deaths of American prisoners of war. The sentences meted out, confinement for life as to Nomi and eight years confinement for Yokoyama, Suzuki and Shiinoki should not be disturbed on review. It is therefore recommended that the findings of the commission be approved.

6. Action:

Forms of actions designated to carry these recommendations into effect are attached hereto.

CHARLES S. GEORGE
Reviewer
Judge Advocate Section

I concur in general. It is noted that the specification as to Nomi does not charge the killing as wrongfully or unlawfully done. This feature is supplied by the allegations in the charge of which the specification is a part. There a violation of the Laws and Customs of War is pleaded. Thus the accused was fully advised that he was charged with an unlawful killing and no prejudice to his rights resulted from the inartificial failure to repeat the statement of wrongfulness or wrongfulness in the specification.

The three actual killers, though complying with orders, made no substantial investigation of or objection to plainly illegal commands and proposed actions. Their sentences therefor are not excessive. It is to be observed in passing that in the review of many war crimes cases there has never been thus far discovered and credible evidence that plainly illegal orders could not be successfully questioned by a subordinate in the Japanese Armed Forces; much has been found to the contrary. Nomi initiated the executions. If they were approved by his superior as defense claims, the fact still remains that Nomi was a volunteer participant who set the machinery in motion. His sentence, therefor is not inappropriate.

ALLAN R. BROWNE
Lt Colonel JAGD
Army Judge Advocate

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